UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DERRICK MULLINS,

Plaintiff,

-against-

EAST ROCK N ROLLS INC. d/b/a TEA MAGIC and THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Defendants.

Case No. 17CV2563

COMPLAINT

Plaintiff, DERRICK MULLINS (hereinafter "Plaintiff"), through his undersigned counsel, hereby files this Complaint and alleges, as follows:

INTRODUCTION

1. This is a civil action to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 et seq. ("ADA"). Plaintiff also sets forth claims for unlawful discrimination under the New York State Executive Law (the "Executive Law") § 296, New York State Civil Rights Law, § 40, and the Administrative Code of the City New York (the "Administrative Code"), § 8-107.

2. On July 26, 1990, Congress enacted the ADA, 42 U.S.C. § 12101 et seq., the most important civil rights law for persons with disabilities in our country's history.

3. The Congressional statutory findings include:

(a) Some 49,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(b) Historically, society has isolated and segregated individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(c) Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communications, recreation, institutionalization, health services, voting, and access to public services.

(d) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.

(e) The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society justifiably is famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity. 42 U.S.C. § 12101 (a)(l)-(3), (5) and (9).

4. Congress explicitly stated that the purpose of the ADA was:

(a) To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(b) To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(c) To invoke the sweep of Congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities. 42 U.S.C. § 12101 (b)(l)(2) and (4).

5. Congress provided commercial businesses 1 1/2 years to implement the requirements imposed by the ADA. The effective date for Title III of the ADA was January 26, 1992.

PARTIES

6. The Plaintiff has muscular dystrophy. As a result, Plaintiff uses a wheelchair to ambulate. Plaintiff therefore has a disability within the meaning of the ADA. 42 U.S.C. § 12102(2)(A). Plaintiff also has a physical disability within the meaning of the laws of the State of New York.

7. Defendant EAST ROCK N ROLLS INC. ("East Rock") does business as Tea Magic, an establishment selling food and beverages located at 2878 Broadway, New York, New York.

8. Tea Magic is a "place of public accommodation" within the meaning of Title III of the ADA because its operations affect commerce and, among other things, it is "a restaurant, bar or other establishment serving food or drink." 42 U.S.C. § 12181(7)(B); see 28 C.F.R. § 36.104.

9. Defendant THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK (the "Landlord") owns the building in which Tea Magic is located. East Rock d/b/a Tea Magic and the Landlord are hereinafter collectively referred to as "Defendants".

10. The Landlord allows and permits East Rock to occupy the space in its building pursuant to a written agreement.

JURISDICTION and VENUE

11. This Court has jurisdiction over the ADA claims pursuant to 28 U.S.C. §§ 1331 and 1343, and pursuant to 28 U.S.C. § 1367(a), and the Court has supplemental jurisdiction over Plaintiff's claims brought under the laws of the State of New York.

12. Venue lies in this District pursuant to 28 U.S.C. § 1391(b). The acts of discrimination alleged in this complaint occurred in this District, and the public accommodation which is the subject of this action is situated in this District.

STATEMENT OF FACTS

13. Defendants are required to remove architectural barriers to the physically disabled when such removal is readily achievable for a place of public accommodation that has existed prior to January 26, 1992, 28 CFR § 36.304(a). In the alternative, if there has been an alteration to Defendants' place of public accommodation since January 26,1992, then the Defendants are required to ensure, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and useable by individuals with disabilities, including individuals who use wheelchairs, 28 CFR 36.402; and finally if the Defendants' facility is one which was designed and constructed for first occupancy subsequent to January 26,1993 as defined in 28 CFR 36.401 then the Defendants' facility must be readily accessible to and useable by individuals with disabilities as defined by the ADA.

14. Plaintiff and his friends often travel to a gym by bus and the stop Plaintiff uses near is near Tea Magic.

15. Plaintiff also shops in the area where Tea Magic is located.

16. Plaintiff would like to be able to enjoy a cup of tea and/or a snack at Tea Magic on his way to, or leaving, the gym, or when he is shopping, however, he is unable to do so as the result of the step at the entrance (see photo annexed as Exhibit A).

17. Plaintiff last attempted to gain entry to Tea Magic on April 6, 2017.

18. Plaintiff will continue to visit the Tea Magic and will attempt to enjoy the goods and services provided once the discriminatory barriers in place have been remediated.

19. The barriers to access at Tea Magic have effectively denied or diminished Plaintiff's ability to visit the property and have caused embarrassment and frustration to the Plaintiff.

20. Defendants have discriminated against the Plaintiff' by denying him access to full and equal enjoyment of the goods, services, facilities, privileges, advantages and or accommodations of its place of public accommodation or commercial facility, in violation of 42 U.S.C. 12181, et seq., and 28 CFR 36.302, et seq., as described below.

21. Records of the NYC Department of Buildings indicate that substantial alterations have taken place at Tea Magic since the enactment of the ADA, the precise scope and nature being currently unknown.

22. The services, features, elements and spaces of Tea Magic are not readily accessible to, or usable by Plaintiff as required by the Americans with Disabilities Act Guidelines, 28 C.F.R. Part 36, and the 2010 ADA Standards for Accessible Design (hereinafter, the " Standards"):

23. An inspection of Tea Magic was conducted and multiple violations and barriers were observed, all of which the Plaintiff encountered or has been made aware of, and prevent him from entering Tea Magic and, enjoying a cup of tea or a snack in comfort.

24. Tea Magic is located on 9th Avenue between 54th and 55th Streets. The entrance consists of two 28 inch wooden doors which open outwards. In front of the entrance, there are two uneven steps. The first step has a 5 inch rise and the second step is approximately 6 inches high.

The following barriers, with specific violations noted (all citations are to the Standards, unless otherwise stated), are present at Tea Magic:

a) The uneven steps at the door create a rise within the maneuvering clearance which

Plaintiff cannot navigate in his wheelchair and prevent Plaintiff from moving from the sidewalk into Tea Magic, as there is no accessible route (201.1, 206.4, 206.2.1, 402, 404.2.4.1, 404.2.4.4).

b) Due to the failure to ramp the rise over ½ inch at the entrance (403.4, 303.4), there is no accessible route which consists of components capable of navigation by a wheelchair (206.4, 402.1 and 402.2).

c) Even if someone assisted Plaintiff in entering, he would be left in jeopardy in the event of an emergency, since there is no accessible means of egress (207).

d) There are no railings on either side of the steps (504.6, 505.2, 505.10).

e) Due to the narrow double doors, with no automatic door opener, there is no single door which provides a 32 inch opening provided which would allow Plaintiff to make an independent entry (404.2.3 and 404.3).

Upon entry, there is a seating area to the right, with tables and bar stools. The table seating consists of "peg leg" style tables, none of which would allow the Plaintiff to sit and dine comfortably in his wheelchair.

The following violations are noted:

f) There are no accessible tables which allow space for Plaintiff to comfortably sit in his wheelchair (306, 306.1, 306.2.1, 306.2.5, 306.3, 306.3.5).

g) 206.2.5 requires that restaurants provide an accessible route to all dining areas, not furnished here (see advisory 206.2.5 and advisory 902).

h) 226.1 requires 5% of the total restaurant seating to be accessible and dispersed throughout the restaurant (226.2). No such accessible seating is provided.

i) Defendants have failed to comply with 202.3, which requires altered elements and spaces to comply with the applicable requirements of Chapter 2.

j) Defendants have failed to comply with 202.4, which requires alterations within primary function areas to ensure the path of travel to the altered area is accessible, to the maximum extent feasible.

25. Defendants fail to provide a means by which people in wheelchairs can be afforded equal benefit of their services, in violation of 42 USC § 12182(b)(ii), which provides: "It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals."

26. There is no way for Plaintiff to enter Tea Magic independently, sit comfortably at a table. Therefore, the violation of the foregoing statutory provision would prevent Plaintiff from enjoying the facilities of Tea Magic in the same way a non-disabled patron may benefit from them.

FIRST CLAIM FOR RELIEF
(Americans with Disabilities Act)

27. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint as if fully set forth herein.

28. Title III of the ADA provides that "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

29. Defendants have discriminated against Plaintiff on the basis of disability. Defendants' discriminatory conduct includes but is not limited to:

a. Discriminatory exclusion and/or denial of goods, services, facilities, privileges, advantages, accommodations, and/or opportunities;

b. Provision goods, services, facilities, privileges, advantages, and/or accommodations that are not equal to those afforded non-disabled individuals;

c. Failing to make reasonable modifications in policies, practices, and/or procedures as necessary to afford the goods, services, facilities, privileges, advantages, and/or accommodations of the subject property to individuals with disabilities;

d. Failing to design and/or construct the subject property so that it is readily accessible to and usable by individuals with disabilities;

e. Failing to remove barriers to individuals with disabilities where it would be readily achievable to do so.

30. Defendants could have removed some of the illegal barriers at Tea Magic by ramping, with railings, the steps at the entrance and purchasing ADA complaint tables.

31. In the alternative, Defendants have violated the ADA by failing to provide Plaintiff with reasonable alternatives to barrier removal as required by 28 C.F.R. § 36.305.

32. Defendants' failure to remove the barriers to access constitutes a pattern and practice of disability discrimination in violation of 42 U.S.C. § 12188(b)(l)(B)(i), (b)(2)(A)(iv), and 28 C.F.R. § 503(a).

33. Defendants have and continue to discriminate against Plaintiff in violation of the ADA by maintaining and/or creating an inaccessible place of public accommodation.

34. Defendants’ violations of the ADA have harmed and will continue to harm Plaintiff in the future.

SECOND CLAIM FOR RELIEF
(Violation of New York State Executive Law)

35. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

36. The Defendants have, and continue, to subject Plaintiff to disparate treatment by denying Plaintiff equal opportunity to use their place of public accommodation all because he is disabled.

37. By failing to comply with the law in effect for decades, the Defendants have articulated to disabled persons such as the Plaintiff that they are not welcome and not desired as patrons of their place of public accommodation.

38. The Defendants have discriminated against Plaintiff in violation of Executive Law § 296(2), by maintaining and/or creating an inaccessible place of public accommodation.

39. The Defendants have failed to make all readily achievable accommodations and modifications to remove barriers to access in violation of Executive Law § 296(2)(c)(iii).

40. It would not impose an undue hardship or undue burden on the Defendants to make their place of public accommodation fully accessible.

41. As a direct and proximate result of the Defendants' unlawful discrimination, in violation of the Executive Law, Plaintiff has suffered, and continues to suffer emotional distress, including but not limited to humiliation, embarrassment, stress, and anxiety.

42. Plaintiff has suffered damages in the amount of at least $2,000.00 (TWO THOUSAND DOLLARS) and the total amount shall be determined at trial.

THIRD CLAIM FOR RELIEF
(Violation of the Administrative Code of the City of New York)

43. Plaintiff realleges and incorporates by this reference all allegations set forth in this Complaint as if fully set forth herein.

44. The Defendants have, and continue, to subject P1aintiff to disparate treatment by directly and indirectly refusing, withholding, and denying the accommodations, advantages, facilities, and privileges of their place of public accommodation, all because of disability, in violation of Administrative Code § 8-107(4).

45. The Defendants have discriminated against Plaintiff in violation of Administrative Code of the City of New York, § 8-107(4), and Local Law 58 by maintaining and/or creating an inaccessible place of public accommodation.

46. The Local Civil Rights Restoration Act of 2005 (the "Restoration Act"), also known as Local Law 58, clarified the scope of the Administrative Code in relation to the New York City's Human Rights Law. The Restoration Act confirmed the legislative intent to abolish "parallelism" between the Administrative Code and the Federal and New York State anti-discrimination laws by stating as follows:

> The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York State civil and human rights laws, including those laws with provisions comparably-worded to provisions of this title, have been so construed.

Restoration Act§ 7 amending Administrative Code §8-130.

47. The Administrative Code is to be construed broadly in favor of Plaintiff to the fullest extent possible. Albunio v. City of New York, 2011 NY Slip Op 02480 (N.Y. Court of Appeals, March 31, 2011).

46. As a direct and proximate result of the Defendants' unlawful discrimination, in violation of Administrative Code of the City of New York, Plaintiff has suffered, and continues to suffer emotional distress, including but not limited to humiliation, stress, embarrassment, and anxiety.

48. The Defendants' long-standing refusal to make their place of public accommodation fully accessible was egregious, and undertaken with reckless disregard to Plaintiff's rights under the Administrative Code.

49. By failing to comply with the law in effect for decades, the Defendants have articulated to disabled persons such as the Plaintiff that they are not welcome and not desired as patrons of their place of public accommodation.

50. By refusing to make the place of public accommodation accessible, the Defendants have unlawfully profited from their discriminatory conduct by receiving revenues from unlawful space and then pocketing monies they should have lawfully used to make the place of public accommodation fully accessible. The unlawful profits plus interest must be disgorged.

51. Plaintiff has suffered damages in the amount of at least $2,000.00 (TWO THOUSAND DOLLARS) and the total amount shall be determined at trial.

INJUNCTIVE RELIEF

52. Plaintiff will continue to experience unlawful discrimination as a result of the Defendants' failure to comply with the above-mentioned laws. Therefore, injunctive relief is necessary to order the Defendants to alter and modify their place of public accommodation and their policies, practices and procedures.

53. Injunctive relief is also necessary to make Tea Magic readily accessible to and usable by Plaintiff in accordance with the above-mentioned laws, in part, by compelling Defendants to ramp the entrance to Tea Magic and installing ADA compliant tables.

DECLARATORY RELIEF

54. Plaintiff is entitled to a declaratory judgment concerning each of the accessibility violations committed by the Defendants against Plaintiff as to the policies, practices, procedures, facilities, goods and services.

ATTORNEY'S FEES, EXPENSES AND COSTS

55. In order to enforce Plaintiff's rights against the Defendants, Plaintiff has retained counsel and is entitled to recover attorney's fees, expenses and costs pursuant to the ADA and the Administrative Code. 42 U.S.C. §12205; 28 C.F.R. §36.505; and Administrative Code § 8-502.

WHEREFORE, Plaintiff respectfully requests that the Court enter a judgment against the Defendants, in favor of Plaintiff, containing the following relief:

A. Enter declaratory judgment declaring that the Defendants have violated the ADA and implementing regulations, Executive Law and Administrative Code and declaring the rights of Plaintiff as to the Defendants' place of public accommodation, and its policies, practices and procedures

B. Issue a permanent injunction ordering the Defendants to remove all violations of the ADA, Executive Law and Administrative Code, including but limited to the violations set forth above;

C. Retain jurisdiction over the Defendants until the Court is satisfied that the Defendants' unlawful practices, acts and omissions no longer exist and will not reoccur;

D. Award at least $2,000.00 (TWO THOUSAND DOLLARS) to Plaintiff as compensatory damages, plus pre-judgment interest, as a result of the Defendants' violations of the New York State Executive Law and the Administrative Code of the City of New York;

E. Award reasonable attorneys' fees, costs and expenses pursuant to the Administrative Code;

F. Find that Plaintiff is a prevailing party in this litigation and award reasonable attorney fees, costs and expenses pursuant to the ADA; and

G. For such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Dated: April 1, 2017

Donald J. Weiss

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EXHIBIT A

Tea Magic
Bubble Tea · Coffee · Pastries · Frozen Yogurt
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